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ABSTRACT

This paper examines the legal responsibility of networks to fairly represent outsiders in network employment and programming. The outsiders--women, racial and ethnic minorities, homosexuals, older people, members of minor political parties--have been using legal avenues provided by the Federal Communications Commission (FCC) and the Equal Employment Opportunity Commission (EEOC) as means of affecting the networks. But recent events, such as requests by minor candidates for equal time in the 1972 and 1976 elections, demonstrate the FCC's inability to regulate network activities effectively, either indirectly, through the licensing of stations owned by networks, or directly, through Section 315 (the fairness doctrine and equal-time law) of the Communications Act. The paper also uses a 1975 class-action suit against the National Broadcasting Company as evidence that the EEOC is much better equipped to bring about progress than is the FCC and that a continued assault upon discrimination in employment is the most deliberate way to achieve network programming more satisfactory to outsiders, since increased membership within the system increases the likelihood that minorities will be fairly represented in network news and entertainment programs. (RL)

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BROADCAST NETWORKS AND THE OUTSIDERS: LEGAL RESPONSIBILITY FROM TWO PERSPECTIVES

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Since the birth of the National Broadcasting Company (NBC) fifty years ago, the commercial networks have become the dominant force in American broadcasting. This development has occurred in spite of the Federal Communication Commission's (FCC) dedication to the principle that the primary responsibility for broadcasting's service to the American people is lodged with station licensees and not with networks. This paper concerns the major broadcast networks and groups of people who are inadequately and/or unfairly represented in network employment and programming. In the 1970's, the outsiders--women, racial, and ethnic minorities, gays, older Americans, members of minor political parties--are traveling diverse legal avenues for affecting the networks. Recent events have demonstrated the FCC's inability to regulate network activities effectively, suggesting that more direct legal means promise greater gains for outsiders who want to change the networks.

The regulation of television and radio networks by the FCC occurs mainly through indirection. The Communications Act of 1934 describes the responsibilities of the FCC in the regulation of broadcasters through the primary vehicle of licensing. Regulation of networks by the FCC was not articulated until the 1940 Report on Chain Broadcasting. The FCC's Chain Regulations, adopted in 1941, established the FCC's authority to regulate relationships between networks and their affiliates. In 1943, the Supreme Court upheld the FCC's right to regulate the

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business relationships between a network and its affiliates.[1] Since The Network Case, FCC forays into direct network regulation have been fountainheads of controversy, the Prime-Time Access Rule of 1970 being a notable recent example.

Even more recently, the decision in the Family Viewing case reaffirmed the autonomy of stations in matters of programming. According to Judge Warren J. Ferguson, author of the decision, FCC Chairman Richard E. Wiley used the threat of a "full-fledged administrative proceeding" (likely to be costly to the networks in several ways) to force the networks to accept the designation of 7-9 p.m. as family viewing time.[2] This action constituted "improper interference" by the FCC (and the National Association of Broadcasters and the networks) in programming rights and duties belonging to licensees.[3] Wiley, of course, rejected the court's findings, reiterating the fact that the FCC has no authority to enforce family viewing.[4] Thus, although there is nothing illegal about family viewing as a programming principle, the enforcement of the principle--whether by the government or by the NAB--is illegal because the enforcement is a violation of First-Amendment rights of station licensees.

There are, however, two major programming matters in which the FCC does have authority to regulate networks directly. In both of these areas, the ideal of regulation is to assure that the voice of the outsider is heard. I am speaking now of the fairness doctrine and the equal-time law (Section 315 of the Communications Act). The FCC's application of the latter during the most recent political campaign has hardly advanced the ideal. Four years ago, Representative Shirley Chisholm (D-N.Y.) invoked Section 315 in her demand for network time equal to that given to George McGovern and Hubert Humphrey, who appeared

on special editions of Face the Nation (CBS) and Meet the Press (NBC). The FCC denied her claim on grounds that the programs constituted news coverage. The U.S. Court of Appeals reversed that decision, indicating that the programs were not bona fide news events and that networks do not have the prerogative to determine who is a "major candidate" for public office.[5]

In time for the 1976 presidential campaign, Section 315 was amended so that the events of 1972 could not repeat themselves. In September of 1975, the FCC ruled that political debates not conducted under the control of broadcasters and candidates' press conferences are bona fide news events and, therefore, exempt from the equal-time law. This ruling cleared the way for the Ford-Carter debates of 1976 by assuring broadcasters that equal time need not be given to candidates other than those representing the Republican and Democratic parties. Representative Chisholm, the National Organization for Women, and the United Church of Christ requested and were refused Supreme Court review of the new ruling in 1976.[6] Furthermore, attempts by other presidential candidates for equal time came to similar ends. Independent candidate Eugene McCarthy, American Independent Party candidate Lester Maddox, Socialist Workers Party candidate Peter Camejo, The American Party candidate Tom Anderson, and others all were denied network time.[7]

While minor party candidates are unhappy about the changes in Section 315, there are many insiders who would not be unhappy to see the equal-time law repealed altogether. The editors of Broadcasting spoke unequivocally of "Section 315 and all of the absurd and cumbersome rulings that have risen from it to deface broadcasting."[8] Among broadcasters, the feeling that the net effect of Section 315 has been to obstruct public debate rather than to foster it is common.

The networks' disdain for 315 was extended to other programming regulations in a speech by the president of CBS news, Richard Salant:

> For those who look with passionate wistfulness at the freedom of our print brethren--freedom from Section 315, freedom from the fairness doctrine, freedom from the personal attack rule, these are the times that try our souls. It is humiliating and frustrating to find all the obstacles that stand in our way as we go through a presidential campaign period.[9]

If the outsiders feel as though they have second-class citizenship in American society, then broadcasters feel as though they have similar status in the society of journalists. To quote CBS Board Chairman William S. Paley, the fairness doctrine constitutes "superediting by a government agency, . . . a vexing symbol of broadcasting's second-class citizenship in journalism."[10] In the eyes of the networks, the fairness doctrine is an intrusion upon First-Amendment rights based upon an anachronism: the notion that broadcast frequencies are more limited in number (and, therefore, more deserving of regulation) than newspapers.

This issue suggests the paradox that is central to the regulation of broadcast programming by means such as the fairness doctrine, the equal-time law, and ascertainment of community needs, tastes, and desires as a requirement for license renewal. In discussing the latter, Erwin G. Krasnow and John C. Quale articulate the paradox:

> On the one hand, the FCC is forbidden to intrude in the area of program content. Yet, at the same time, both the FCC and Congress are faced with enormous pressure to improve the <u>performance</u> of the media--meaning programming.[11]

The regulation of programming thrusts the FCC into the centers of controversy over basic social issues. The inability of the commission to function efficiently and fairly there is not surprising, given the enormity of the task. Neither the networks nor the outsiders take much satisfaction from the FCC's performance.

In the light of the FCC's lack of general authority over the networks and the paradoxical nature of program regulation itself, the FCC and the outsiders wishing to make inroads on the networks often turn their attention to the licenses of the stations that are owned by ABC, CBS, and NBC. For example, in the family viewing fracas, threats (real or imagined) of license renewal difficulties loomed large on the horizons of stations owned by the networks.[12]

In addition, groups concerned with improving news coverage of women and issues of interest to women, programming for women, and employment opportunities for women have challenged the licenses of network-owned stations on both coasts. In 1974, the Los Angeles Women's Coalition for Better Broadcasting[13] negotiated with all three networks.[14] The Coalition secured agreements with ABC (owner of KABC-TV) and NBC (owner of KNBC-TV)[15] for improvement in programming and employment of women. Negotiations with CBS were not so successful, and the Coalition filed a petition to deny renewal of CBS's license to operate KNXT-TV based on programming and employment issues.[16]

In the East, the National Organization for Women, the National Women's Political Caucus, the Women's Equity Action League, and Federally Employed Women challenged the licenses of WABC-TV (owned by ABC) in New York City and WRC-TV (owned by NBC) in Washington, D.C. In the case of WABC-TV, the FCC rejected the petition to deny on grounds that the licensee has considerable discretion in choosing the leaders from whom to ascertain community needs, in news coverage of women, and in other programming matters. At the same time, the FCC conditionally rejected the petition to deny the renewal of WRC-TV's license.[17] NBC's license to operate that station finally was renewed on February 18, 1976, despite the Equal Employment Opportunity Commission's finding

that discrimination against women occurs at WRC-TV. In its decision, the FCC distinguished between insuring the protection of public interest, convenience, and necessity (the Commission's job) and the restitution of private rights (a function beyond the purview of the FCC). The FCC did order WRC-TV to post announcements of all job openings where all employees might see them, however.[18]

The WRC case exemplifies the plight of citizens' groups in general where license challenges are concerned. If a complainant raises a "substantial issue" of employment discrimination, for example, FCC rules require an administrative hearing. Without a hearing, challenging groups have no access to comprehensive date on a licensee needed to determine the underlying reasons for disparities in employment. The FCC, however, has never defined "substantial issue." The FCC was free to disregard the Equal Employment Opportunity Commission (EEOC) finding of discrimination and to deny the request for a hearing (three years after petition to deny was filed), claiming that the station's employment profile had improved and that the station was in compliance with public interest standards.[19] Even though the FCC prides itself on being the only Federal regulatory agency to develop formal rules for eliminating employment discrimination in the industry it regulates, Civil Rights groups point out the inadequacy of the FCC's public interest standards compared with the current statutory and case law upon which the EEOC standards are predicated.[20] The problem created by overlap in the functions of the FCC and the EEOC is an issue still unresolved as the Court of Appeals considers the WRC-TV and WABC-TV cases.[21]

In the light of this situation, the National Commission on the Observance of International Women's Year has recommended "that the FCC grant a hearing on the issue of employment discrimination whenever a

challenger (petitioner) or a licensee shows that the EEOC has found a reasonable cause to believe the licensee has violated TItle VII of the 1964 Civil Rights Act."[22] The new FCC equal employment opportunity guidelines[23] notwithstanding, such a policy conceivably could help to bring broadcastings' employers, including the networks, out of the dark ages that preceded the dawn of equal employment opportunity.

The Civil Rights Act probably is the most promising legal means by which women and other power minorities may gain access to the networks. Title VII of that act prohibits discrimination in employment on the basis of race, color, religion, sex, and national origin. The violation of that law by NBC and several broadcast unions has precipitated a major test of the outsiders' legal power against the insiders at NBC.

On February 7, 1973, sixteen employees of NBC filed a sex discrimination complaint with the City of New York, City Commission on Human Rights. The complaint named as respondents: NBC, RCA Corp., WNBC-TV and Radio, six national unions (American Federation of Musicians, American Federation of TV and Radio Artists [AFTRA], Directors Guild of America, International Association of Technical and State Employees [IATSE], National Association of Broadcast Employees and Technicians [NABET], and Writers Guild of America), eight IATSE locals and one NABET local holding collective bargaining agreements with NBC. After two years of study,the Human Rights Commission released its "Determination After Investigation" on January 15, 1975.[24]

The case was brought in the name of Marilyn Schultz on behalf of the Women's Committee on Equal Employment Opportunity (WC=EO), a bona fide organization of past and present NBC employees. The Commission determined "that there exists probable cause to believe that women

employees at NBC have been discriminated against and have suffered injury as a consequence."[25] The Commission found that probable cause did not exist to believe that RCA had engaged in the formulation or implementation of discriminatory acts, except with regard to certain features of RCA's Long Term Disability Plan and the RCA Insurance Plan.[26] The Commission merged the complaints against WNBC-TV and Radio into the complaint against NBC because WNBC-TV and Radio is a subdivision of NBC and does not act independently of NBC with regard to employment practices. The Commission dismissed the complaint against five of the national unions (American Federation of Musicians, AFTRA, Directors Guild of America, Writers Guild of America, and IATSE) and three IATSE locals. The Commission did not dismiss the complaint against NABET and its Local 11 or against IATSE Locals 1, 4, 52, 644, and 771.

The EEOC's investigation revealed numerous discriminatory practices at NBC. A brief summary of the Commission's findings follows. The report divides NBC's 3138 employees into four major occupational categories. Among "exempt" employees (managers, supervisors, professionals, sales workers, officials, and all other non-clerical, non-technical white collar workers),[27] only 15% (181 of 1209) were female. Clerical workers (secretaries, typists, clerks, messengers, typists, pages, guides, office machine and telephone operators, and other office service personnel) were 75% female. Among technical employees (those with specialized broadcasting skills--engineers, electronics experts, craftsmen, and stagehands) 1.9% (17 of 891) were female. Finally, of 108 operative, labor, and service employees (various unskilled and maintenance workers), only 1.9% were females.

The Commission found NBC's hiring and promotion practices to be so loosely structured that analysis was dificult:

> In investigating the charges in the present complaint, Commission staff determined that the only organizing factor in the loosely structured clerical and exempt workforce was NBC's own salary grading system. There is no other objective measure of the level of jobs in terms of the value NBC places on them. Job descriptions do exist but are seldom utilized, even in filling vacancies. Qualifications are flexible. Job titles are created, modified, or dropped to suit the situation or the person; they number in the hundreds and are largely unrelated to each other or to any written standard. [28]

Such looseness of structure not only makes analysis difficult but provides fertile ground for the unchecked growth of illegal discrimination. Patterns of employment that show males predominating in upper salary grades and females predominating in lower salary grades are the result:

> Thus, although women occupy somewhat over one-fourth of all the jobs, they are substantially confined to clerical/secretarial positions. In a company where exempt status is obtained largely through promotion, such a low female percentage reveals consistent underutilization of the available female talent within the firm's own ranks. As will be shown, educated and experienced women who are working or have worked at NBC in subsidiary positions were and continue to be denied promotional and occupational opportunities equivalentto those offered to males. . . . The current unique distribution of male and female workers throughout the company is the result of practices of recruitment, hiring, assignment, and promotion which NBC has developed over time and which in the past have operated to exclude females from the exempt applicant pool, to place females overwhelmingly in clerical positions regardless of their qualifications, and to withhold from them the opportunity to move up offered to males. [29]

As a result of discriminatory initial placement and "the lack of consistent and consistently applied personnel policy, standards, and procedures," [30] women in NBC's system have started lower and move up more slowly than their male counterparts.

The practices that have resulted in discrimination regarding

non-union positions include the unrestricted proliferation of job titles (often to accommodate individuals) and the means by which employees are identified for promotion. With regard to the latter issue, the Commission identified NBC's pre-eminent position in a glamour industry as a contributor to discrimination. The glamour of the communications field attracts huge numbers of overqualified applicants for entry-level positions. Hiring managers have the luxury of selecting employees from a large number of candidates with substantial--and often excessive--education and experience credentials. To the extent that experience is used as a hiring criterion, this situation favors males because they are more likely than the overqualified female applicants to have had broadcast experience.

This escalation of standards created by the broadcasting job market creates a workforce full of overqualified employees who are readily available for promotion. The method of reviewing employees for promotion in such a system is crucial; and at NBC that method has excluded women systematically, if not intentionally. Excerpts from the Commission's determination follow:

> When an opening above the entry level occurs, the first source of candidates is the current employee pool eligible and qualified for promotion. At this stage, practices are in operation that inhibit female candidates as follows:
>
> Although the hiring manager must submit a job requisition to the personnel department in order to obtain budget authorization, the manager may simultaneously recommend and effectively select the person to fill the job if someone is eligible and available within the department. In view of the limited female employment at exempt levels, males will overwhelmingly benefit if final selection is made in this way.
>
> If no candidate is immediately recommended and a broader internal search is required, the personnel department consults its employee skills file, consisting of cards, filled out and updated annually by the employees themselves, setting forth their skills

> and qualifications. Although this appears on the surface to be an equitable search system, in fact, only employees over grade 14 are included, thus excluding most female employees. (Almost 80% of all female employees are under grade 15.)
>
> An important factor in each of these aspects of the internal search process is the lack of objective standards. Although job descriptions are nominally in existence, qualifications are in fact set orally and the hiring manager is permitted to be flexible in appraising candidates. Thus, the candidate is not informed as to what standards are to be met and the manager may exclude anyone as unqualified without breaching policy or abusing authority. Since the overwhelming number of inside applicants will be male anyway, for the reasons indicated above, the few females can be declared unqualified due to non-job-related educational, experience, or skill requirements. [31]

In the time between the filing of the complaint and the Commission's determination, NBC instituted a posting system for non-union openings so that the existence of these openings generally is known. The Commission indicated, however, that this would not "undo years of exclusionary recruitment, non-job-related selection standards, and limited access to promotion, all of which worked to the disadvantage of female applicants and employees at every stage of the recruitment and selection process."[32]

The situation of secretaries at NBC provides a poignant illustration of the problem. In view of the fact that at any moment most openings are at the clerical or lower professional levels,[33] applicants at NBC are most likely to get beyond the receptionist by declaring themselves to be secretarial candidates regardless of their qualifications. Females obviously have borne the brunt of this pressure: all of NBC's 343 secretaries are women, having been steered into the position in the employment process. "Male applicants, who are viewed by NBC as lacking such skills, are not advised of secretarial openings. Thus, women need not compete with men for secretarial jobs, and men

have proportionately greater access to all other job openings at NBC."[34]

Once hired, secretaries at NBC face a unique set of conditions which discriminate against them in opportunities for advancement. As in no other position at NBC, a secretary's salary grade is dependent upon her boss's position rather than on the work she performs. Thus, her own increased skills or responsibilities are not considered as criteria for advancement. Furthermore, secretaries have their own promotion ladder, which is not integrated with the rest of the NBC structure. Secretaries are classified in salary grades 6 through 14 (though over 75% are in grades 7 through 9). As indicated earlier, NBC's search and evaluation system for professional promotion begins at grade 15. Thus, secretaries--all women and all overqualified for their current jobs--are not considered for promotion into professional positions at NBC.

With regard to union-covered occupations, the complaint centers upon discriminatory features of collective bargaining agreements between the unions and NBC. Such practices as training personnel on equipment new to them through a "buddy system" have perpetuated male dominance in technical jobs:

> Thus, a cycle is complete. Employees, especially female employees, cannot obtain training at NBC without access to the equipment. However, the equipment which NBC uses cannot be used by NBC employees who are not members of the bargaining unit as defined in the master agreement. Thus, a group which is 98% male is the only group which can obtain training in these skills at NBC. Thus, females are discriminatorily excluded from training opportunities at NBC.[35]

In general, the reliance upon existing union membership (almost entirely male) as a hiring pool for union-covered jobs, and the exclusive hiring of males for positions in which union membership almost automatically follows hiring, have kept women out of union-covered positions. In

this area, the Commission found reasonable cause to believe that the unions and NBC were culpable because of actions taken independently and because of actions in which NBC and the unions cooperated.

On January 31, 1975, two weeks after the New York Commission's determination was released, the United States Equal Employment Opportunity Commission found probable cause to believe that NBC and the other respondents engaged in unlawful discriminatory practices.[36] On the basis of these determinations, the WC=EO and the sixteen NBC employees filed a class action sex discrimination suit in Federal Court against NBC, RCA, WNBC, New York, NABET Local 11, and Locals 644, 4, 1, and 771 of IATSE on December 2, 1975.

The charges in that suit reflect the findings of the Human Rights Commission:

> Plaintiffs allege that defendants NBC and WNBC maintain a pattern and practice of discrimination in employment on the basis of sex. As part of that pattern and practice, the defendants:
>
> (a) Place a higher proportion of male employees in executive, managerial, and professional positions than female employees;
>
> (b) Relegate women disproportionately to jobs with less responsibility, pay, prestige and prospects for promotion than those held by equally qualified men;
>
> (c) Fail to accord female employees the rank, title and recognition commensurate with their duties and responsibilities;
>
> (d) Hire males initially at higher salaries and into jobs with better opportunities for promotion than they hire qualified females;
>
> (e) Maintain a policy of channeling women, but not men, into secretarial positions regardless of their qualifications;
>
> (f) Exclude virtually all women from technical and craft positions;
>
> (g) Assign and/or promote women to less prestigious divisions of the Company than the divisions to which men are hired or promoted;
>
> (h) Maintain sex-segregated departments;
>
> (i) Maintain certain jobs that are staffed almost entirely by women under working conditions that are particularly demeaning;
>
> (j) Pay men and women with equal qualifications and seniority unequal salaries;

(k) Maintain lower salary scales for predominantly female departments;

(l) Maintain lower pay scales for jobs predominantly filled by women which require a level of responsibility and work production equal to that of higher paying jobs held predominantly by men;

(m) Assign work normally of higher job classifications to women in lower job classifications without assigning women the rank and/or the salary associated with such work;

(n) Pay women employees fewer and lower merit raises and raises for promotion than it pays male employees;

(o) Fail to maintain a hiring, promotion and transfer policy based on objective job-related criteria that are uniformly applied to men and women;

(p) Fill job openings through word-of-mouth recruitment and union referrals which unfairly restrict the hiring, promotion and transfer of qualified women;

(q) Limit job opportunities for women by promoting them primarily to jobs which have traditionally been held by women and by discouraging women from applying for jobs which have traditionally been held by men;

(r) Limit promotional opportunities for women by failing to provide training opportunities accorded to men;

(s) Deny secretaries (who are all or predominantly female) promotional opportunities into non-secretarial positions;

(t) Maintain a practice of classifying and compensating secretaries in a way which is unlike the classification and compensation of other employees; that is, not on the basis of merit or job function, but on the grade level of the secretary's immediate boss; and

(u) Refuse to provide leave time and benefits for disabilities caused by pregnancy on the same terms that they provide leave time and benefits for disabilities caused by other conditions.

Plaintiffs allege that defendant RCA maintains policies and practices of discrimination in employment on the basis of sex. As one of those policies and practices, the defendant refuses to provide leave time and benefits to NBC and WNBC employees for disabilities caused by pregnancy on the same terms that it provides leave time and benefits for disabilities caused by other conditions.

Plaintiffs allege that defendant Local 11, NABET, maintains practicies and policies of discrimination in employment on the basis of sex. As part of these practices and policies the defendant:

(a) Maintains a system of word-of-mouth recruitment and referrals which unfairly restrict the hiring, promotion and referral of qualified women;

(b) Acts by and through its collective bargaining agreement with defendant NBC to unfairly deny women

access to training for technical and engineering jobs; and

(c) Maintains an informal buddy system which denies women equal access to on-the-job training in the technical and engineering jobs.

Plaintiffs allege that defendant Local 644, IATSE, maintains practices and policies of discrimination in employment on the basis of sex. As part of these practices and policies, defendant:

(a) Maintains membership standards and procedures which disproportionately affect and exclude women from the Union;

(b) Acts by and through its collective bargaining agreement to restrict the hiring, assignment, promotion and transfer of women to camera jobs; and

(c) Acts by and through its collective bargaining agreement to deny women equal access to training opportunities.

Plaintiffs allege that defendant Local 1, IATSE, and Local 4, IATSE, maintain practices and policies of discrimination in employment on the basis of sex. As part of these practice and policies, defendants:

(a) Maintain membership standards and procedures which unfairly discriminate against women;

(b) Maintain an apprenticeship program which excludes virtually all women;

(c) Maintain an apprenticeship testing mechanism that is not job validated pursuant to 29 C.F.R. 1607;

(d) Refer only men for "extra" work; and

(e) Act by and through their collective bargaining agreement with defendant NBC to unfairly deny women access to training for the technical jobs within their jurisdiction.

Plaintiffs allege that defendant Local 52, IATSE, maintains practices and policies of discrimination in employment on the basis of sex. As part of these practices and policies, defendant:

(a) Maintains membership standards and chooses members according to procedures which exclude women;

(b) Acting by and through its collective bargaining agreement maintains a referral system relied on by defendant NBC through which virtually no women are referred to NBC technical jobs within the Union's jurisdiction;

Plaintiffs allege that defendant Local 771, IATSE, maintains practices and policies of discrimination in employment on the basis of sex. As part of these practices and policies, defendant:

(a) Acting by and through the collective bargaining agreement, has established a recruitment system for Vacation Relief and entry level permanent employment which limits the opportunities for women.[37]

The suit asks the court to issue a permanent injunction:

> (1) Requiring defendants NBC and WNBC to abolish sex discrimination within and among their departments and position by means of an affirmative action plan, giving preference to members of the class presently employed by defendants in establishing goals and time tables for the hiring, placement, and promotion of women;
>
> (2) Requiring defendants NBC and WNBC to accord women salaries, merit increases, responsibilities and assignments commensurate with their positions;
>
> (3) Requiring defendants NBC and WNBC to make prospective and retrospective monetary awards to plaintiffs and the members of their class;
>
> (4) Requiring defendants NBC and WNBC to refrain from using subjective selection criteria for hiring, promoting and assigning employees that have a differential impact on women and which are not validated pursuant to 29 C.F.R. 1607;
>
> (5) Requiring defendants to institute training programs in the technical and craft areas which are designed to compensate for the lost on-the-job training and experience which class members would have acquired had they earlier been assigned to these positions and to give the newly promoted women the background they will need to complete effectively with the men now occupying such positions;
>
> (6) Requiring defendants NBC and WNBC to prepare and publish descriptions and titles for all jobs, specifying for each the criteria for hiring or placement, the salary and the responsibilities of the job;
>
> (7) Requiring defendants NBC and WNBC to re-evaluate and upgrade jobs held totally or primarily by female employees;
>
> (8) Requiring defendants RCA, NBC and WNBC to offer leave and benefits to female employees disabled by pregnancy on the same basis they make leave and benefits available to employees disabled by other conditions;
>
> (9) Requiring defendant Unions to abolish membership qualifications and procedures for membership which exclude or tend to exclude women; and
>
> (10) Requiring defendant Unions to abolish recruitment and referral systems that exclude or tend to exclude women.[38]

On March 15, 1976, the EEOC asked leave to intervene as a party plaintiff in the case. This was granted on July 30, 1976. At the same time, the court approved the motion to grant class action status to the suit. Thus, the suit filed by "The NBC Sixteen" represents some 1200 women:

> The class is composed of all women who were employees of the National Broadcasting Company ...and/or WNBC on/or after February 8, 1972, and/or those who will in the future by employed by NBC and/or WNBC, and/or those who while working at NBC and/or WNBC are members of or might become members of defendant Unions. [39]

In arguing against the class action, NBC claimed that its decentralized employment policies did not constitute systematic discrimination and that the claims of the plaintiffs were not typical of women at NBC.[40] These arguments were not accepted by the court.

The case of The NBC Sixteen is significant because it articulates in full detail the extent of sex discrimination at a major network. In addition, the suit outlines for the first time the discriminatory practices of broadcast unions. NBC asserts that the gains made by women and minorities since 1971 through its affirmative action program eliminate the necessity for continued legal action. Whatever the final outcome of the suit, The NBC Sixteen have shown that the outsiders can take on the networks in a way that no government agency is likely to do on its own.

The continued assault upon discrimination in employment is the most deliberate way to achieve network programming that is more satisfying to the outsiders, whoever they are. Increasing the employment of power minority members throughout the network structure increases the likelihood that the power minorities will be represented more realistically and more fairly in network news and entertainment programs.

On this score, the EEOC is much better equipped (with the requisite experience and desire) to bring about progress than is the FCC. At this point, the position advocated by the networks themselves discomfitingly comes to mind: namely, that the FCC should get out of program regulation altogether. Network officials wish the FCC away

in order to be left alone to make their programming decisions in relative peace. Were it in their power, they would wish the EEOC away too. What I am suggesting is, rather, that the FCC should get out of the business of social legislation in order to make room for the more effective, more determined EEOC and the prosecution of the Civil Rights Act generally. That is another proposition altogether.

NOTES

[1] National Broadcasting Co., Inc., et al v. United States et al, 319 U.S. 190 (1943).

[2] The editors of Broadcasting referred to family viewing time as "a sanitation zone" (editorial, 18 October 1976, p. 74).

[3] "Key Excerpts of the Family-Viewing Decision," Broadcasting, 15 November 1976, pp. 38-53.

[4] "Wiley Pleads His Innocence on Family Time," Broadcasting, 15 November 1976, p. 22.

[5] The Honorable Shirley Chisholm v. FCC, U.S. Ct. of Appeals No. 72-1505 (1972).

[6] "Supreme Court Refuses to Review FCC Debate Ruling," Broadcasting, 18 October 1976, p. 54.

[7] "FCC 315 Stance Holds Up Against Protests from Minor Candidates," Broadcasting, 11 October 1976, pp. 41-42.

[8] Editorial, Broadcasting, 18 October 1976, p. 74.

[9] "In Williamsburg, CBS Radio Takes Cue from History," Broadcasting, 20 September 1976, pp. 25-56 (Salant quoted in speech before CBS Radio Affiliates, Williamsburg, Virginia, 14 September 1976).

10 "Paley Declares It's Time to End Fairness Threat to News Media," Broadcasting, 3 June 1974, pp. 31-32 (Paley quoted in speech at dedication of Syracuse University's Newhouse Broadcast Communications Center, Syracuse, New York, 31 May 1974).

11 "Ascertainment: The Quest for the Holy Grail," Public Telecommunications Review 2 (June 1974): 6.

12 "Key Excerpts of the Family-Viewing Decision," Broadcasting, 15 November 1976, pp. 38-53.

13 The Los Angeles Women's Coalition for Better Broadcasting is composed of the Los Angeles Metro Caucus of the National Women's Political Caucus, the Media Group of the Los Angeles Women's Liberation Union, the California Public Interest Research Group, the Women's Equity Action League of Los Angeles, the National Organization for Women, Inc., the Comision Feminil de Los Angeles, the California Citizen Research Group, and the Career Planning Center.

14 "American Broadcasting Company Agrees with Women to Increase Their Employment at KABC-TV" and "Los Angeles Women's Coalition Wins More Women's Programming on KABC-TV," Media Report to Women 3 (1 February 1975): 14 and 15, respectively.

15 "NBC in Los Angeles Agrees to Improve Programming for Women at KNBC-TV" and "NBC Agrees with Los Angeles Women's Coalition to Increase Employment of Women at KNBC-TV," Media Report to Women 3 (1 February 1975): 12 and 13, respectively.

16 "Los Angeles Women's Coalition Asks Denial of KNXT-TV (CBS) License," Media Report to Women 2 (1 December 1974): 12.

17 "Coverage of Women's News Should Be at Discretion of Broadcaster, Says FCC," Media Report to Women 3 (1 May 1975): 14.

18 "FCC Tells Why It Can Ignore EEOC Findings of Discrimination," Media Report to Women 4 (1 April 1976): 14.

19 U.S., Department of State, "...To Form a More Perfect Union..." Justice for American Women. Report of the National Commission on the Observance of International Women's Year (Washington, D.C.: GPO, 1976), p. 23.

20 See U.S., Congress, Senate, Commerce Committee, Communications Subcommittee, Hearings on FCC Oversight, 6 November 1975.

21 "Appeals Court Seeks to Ascertain FCC's EEO Responsibility," Broadcasting, 8 November 1976, p. 38.

22 U.S., Department of State, "...To Form a More Perfect Union...," p. 23.

23 "FCC Ties Up Loose Ends in Its EEO Package," Broadcasting, 28 June 1976, pp. 34-37.

24 City of New York, City Commission on Human Rights, on the Complaint of Marilyn Schultz for WC-EO Women and All Women at the National Broadcasting Company, as amended No. 5929-J-S (1975). This document is the source of the following summary of the employment situation at NBC.

25 Ibid., p. 2(a).

26 These features include the exclusion from long term disability and accident and sickness insurance covering illness caused by or resulting from pregnancy, childbirth, or miscarriage. No such sex-related conditions are excluded for males.

27 The overwhelming majority of these employees are exempt from wage hour laws, whence the term.

28 Ibid., p. 4.

29 Ibid., pp. 5-6.

30 Ibid., p. 11.

31 Ibid., pp. 12-13.

32 Ibid., p. 12.

33 "The substantial turnover at these levels is, according to NBC, due to the fact that many incumbents are overqualified, having accepted such assignments on a foot-in-the-door basis and become bored and discouraged once the glamour image wears off" (ibid., p. 14).

34 Ibid., p. 17.

35 Ibid., p. 26.

36 "16 Women File Suit Against NBC in Federal Court; Make 21 Charges," Media Report to Women 4 (1 March 1976): 8.

37 WC-EO et al v. NBC et al, Class Action Complaint Filed in U.S. District Ct., Southern District of New York (1975), pp. 10-14.

38 Ibid., pp. 16-17.

39 Ibid., p. 2.

40 "Court Approves Class Action Motion in Women's Suit Against NBC, RCA, Unions," Media Report to Women 4 (1 September 1976): 1.

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